



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



Marie Gosselin
4 East Gilbert Street
Lawrence, Massachusetts 01843

Public Enforcement Letter

Dear Ms. Gosselin:

As you know, the State Ethics Commission has conducted a preliminary inquiry into allegations that you violated the state conflict of interest law, General Laws c. 268A, by asking the Department of Public Works to remove construction debris from your rental property instead of paying a private contractor to do so. Based on the staff's inquiry (discussed below), the Commission voted on March 19, 2002, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §23(b)(2).

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

You are a Lawrence city councilor. The city council is a nine-person board. In your official capacity you participate in decisions involving the city budget including the DPW budget. In addition, as a city councilor, with five other councilors, you can vote to remove senior DPW personnel from their positions.

The DPW's trash collection policy is to not pick up construction debris from private property. It is the individual property owner's responsibility to dispose of such material. Exceptions to the DPW policy are made only in very limited circumstances involving: 1) the elderly; 2) potential safety hazards; and 3) unknown ownership of the debris.

In February 2001, you hired a contractor to perform work on a two-family rental property you own in Lawrence. The contractor left a significant amount of construction debris. The material was left for curb-side removal by Lawrence's trash hauler, Browning Ferris Industries ("BFI"), however, it was not picked up.

Shortly thereafter, you telephoned a DPW foreman and told him that BFI had missed a stop at your rental property and asked if the DPW could come pick up the material. The DPW foreman told you he would come by the residence and take a look at the material. After speaking with you, the DPW foreman said he telephoned BFI and gave it the address of your property. A BFI employee subsequently informed the DPW foreman that BFI did not remove the material because it was construction debris. The DPW foreman drove to your property and saw sheetrock and other construction material at the curbside along with some windows and a door on the porch of the residence. The DPW foreman telephoned you and told you the DPW would not remove the material because it was construction debris. He also told you that BFI would not remove the material, either.

You called the DPW foreman again a few days later. You stated, "That stuff is still here." The DPW foreman replied, "Marie, I can't pick it up." You then said, "I've got a couple windows and a door. Can I put them out?" The DPW foreman told you he would send a crew out to pick up the windows and the door. The DPW foreman sent a two-person crew in a pickup truck to the property on city time. When the crew arrived at the residence, one of the workers radioed back to DPW headquarters and said to the DPW foreman, "Have you seen the pile that's here?" The DPW foreman replied to the worker, "Take the windows and door and leave the rest." The crew spent a total of 45 minutes to an hour on the job.

You called the DPW foreman a third time stating, "The stuff is still there." The DPW foreman replied, "I picked up what you told me, the windows and door." The DPW foreman told you the remaining material was construction debris and the DPW was not going to pick it up. You replied "O.K." and the conversation ended. According to the DPW foreman, that was the last phone call he received from you in regard to the debris.

About a week after your third call to the DPW foreman, the DPW superintendent received an anonymous phone call complaining about the debris. Thereafter, you called the DPW superintendent and said, "I can't get anyone to come out and pick up this trash. Would you please help me out? It's covered with snow." The DPW superintendent drove out to the property and, amidst the debris, saw pieces of broken glass sticking out of the snow. Because there is a school a few blocks from the property, he viewed the situation as a public safety hazard and ordered a crew to go to the property and remove the debris.

After this matter was reported in the newspapers and you became the subject of an Ethics Commission investigation, you requested a bill from the DPW for its services. You were billed a total of \$262.50 for the use of two laborers and a truck for an hour and a half; and for two loads of waste disposal. You paid this bill.

The DPW employees you contacted were aware of your city councilor position when you were requesting the removal of your construction debris. You have indicated that it was not your intention to use your city councilor position in order to have the DPW employees comply with your requests.

II. Discussion

As a city councilor, you are a municipal employee as that term is defined in G.L. c. 268A, §1(g). As such, you are subject to the conflict of interest law G.L. c. 268A generally and, in particular for the purposes of this discussion, to §23 of that statute. A copy of G.L. c. 268A is attached for your information.

Section 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use her official position to secure for herself or anyone else an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

The facts stated above are sufficient to establish reasonable cause to believe that you violated §23(b)(2) by continuing to ask the DPW to remove construction debris from your rental property once you were informed it was against DPW policy to do so. Although you did not explicitly invoke your city councilor position, your repeated telephone calls to the DPW after being informed that it did not take construction debris, constituted a “knowingly or with reason to know” use or attempted use of your councilor position to request the debris pick up. It was not necessary for you to explicitly identify yourself as a public official.ⁱ You had reason to know that your conduct would be interpreted by the staff as an implicit invocation of your official position. This was particularly true where (a) you persisted in asking that the debris be picked up notwithstanding the DPW staff telling you that their policy prohibited them from doing what you were requesting; and (b) as a city councilor you had the power to affect the DPW budget and had removal authority (exercisable together with at least five other councilors) of senior DPW personnel.

The disposal of the construction debris was valued by the DPW at \$262.50. Therefore, its removal was of substantial value. Given that the DPW’s policy is not to pick up such materials, and that your request did not satisfy any of the exceptions to that policy, the removal was an unwarranted privilege. As the average citizen does not have the benefit of the DPW removing construction debris by request, the removal was not properly available to similarly situated individuals. Therefore, because you made several telephone calls to the DPW requesting removal of construction debris after you had been informed that such removal was against DPW policy, there is reasonable cause to believe you violated §23(b)(2).

The Commission is not stating that a high-ranking public official cannot request government services that are properly available to the general public from someone she regulates. Rather, such a public official must be careful that she follows the same rules as everyone else (i.e., the general public). If established or existing policy bars the provision of the services to the general public, the public official must accept that policy

and/or follow an appropriate appellate procedure. For example, you might have asked the DPW at the next council meeting to explain its garbage collection policy, and, as a councilor publicly seek to have that policy amended. A public official should not persist in her requests for services after a subordinate declines the request based on clear policy.

II. Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a public enforcement letter rather than imposing a fine because it believes the public interest would best be served by doing so. The Commission wants to make clear that high-ranking public officials must take care in requesting government services for themselves from the government employees they regulate to ensure that they do not explicitly or implicitly use their official position to obtain preferential treatment.

Based upon its review of this matter, the Commission has determined that your receipt of this public enforcement letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

DATE: April 10, 2002

ⁱ See *Groener v. Oregon Government Ethics Commission*, 59 Or. App. 459 (1982) (In finding a senator “used” his position, the court said, “It is not necessary for a public official to identify expressly the public office he holds when attempting to influence someone, so long as that someone knows it.”)